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# DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT



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## The Home Rule Amendment and the Home Rule Procedures Act

### SUMMARY

Municipal Home Rule is now guaranteed to citizens of Massachusetts by the provisions of Article LXXXIX (89) of the Amendments to the Constitution of the Commonwealth. The Home Rule Procedures Act (*Massachusetts General Laws, Chapter 43B*) provides uniform standards and procedures to implement those parts of the Home Rule Amendment governing charter adoption, revision, and amendment. On the following pages, a summary of the adoption, revision, and amendment procedures is provided.

#### A. CHARTER ADOPTION OR REVISION

#### B. CHARTER AMENDMENT PROCESS

#### C. COMMUNITIES OPERATING UNDER HOME RULE CHARTERS

See also 1993 edition  
of sections of Law & analysis

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The Home Rule Amendment and  
the Home Rule Procedures;  
summary

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## A. CHARTER ADOPTION OR REVISION

In summary form, the procedures for adoption or revision are described below:

**1. *Petition Drive:*** A petition is circulated to determine if there is sufficient interest to warrant placing the question of creating a charter commission on the ballot. The petition must be signed by at least fifteen (15) per cent of the number of voters registered at the preceding state election. The city/town clerk is directed to supply forms to any registered voter who requests them.

**2. *File Completed Petition:*** The completed petition is filed with the board of registrars of voters. The registrars must certify the signatures within ten (10) days of receipt of the petition and report the results to the selectmen or city council.

**3. *Election Order:*** The city council or board of selectmen is allowed thirty (30) days after they receive the certification of the registrars to provide for placing the question on the ballot at the next regular city or town election.

At least sixty (60) days must elapse between the election order and the election.

If the city council or board of selectmen fails to act within the 30 days they are allowed, the question of creation of a commission and the election of charter commission members shall take place on or after the ninetieth (90) day after the date the petition was originally received.

If the charter has not previously been adopted under this Amendment, the question must be “Shall a commission be elected to frame a charter for the (city) (town) of X?” Many persons have been confused over this requirement. This is particularly true in cities where residents are accustomed to thinking in terms of now having a city charter. These existing “charters” are not to be confused with charters adopted pursuant to the Home Rule Amendment. For reasons too complex to discuss here, the Home Rule Amendment does distinguish between pre-existing charters and those adopted under the Amendment. Therefore, even if the only change which is sought is, for example, to change the term of office for the mayor from two (2) years to four (4) years, the question would nevertheless have to be as set forth here. If a charter has been adopted under the Home Rule Amendment procedure, the question on the ballot would be “to revise”, but you cannot revise until you have first framed (adopted) a charter by this procedure.

**4. *Nomination of charter commission members:*** The order placing the question of establishing a charter commission on the ballot must also provide for the election of nine charter commission members. Candidates for the office of charter commission members may have their name placed on the ballot based on the following signature requirements:

Population less than 6,000	10 signatures
6,000 to 11,999	25 signatures
12,000 to 49,999	50 signatures
50,000 to 99,999	100 signatures
100,000 and above	200 signatures

**5. *Election of the commission:*** The names of the charter commission candidates are placed on the ballot in alphabetical order (as required by the Home Rule Amendment) preceded by instructions which state that the voter may vote for nine (9) persons as charter commission members.





The question of electing a charter commission to adopt or revise a charter is also placed on the ballot. If a majority votes in favor of the question of adopting or revising a charter, the nine (9) candidates receiving the highest number of votes are elected.

**6. Charter commission organization:** Within ten (10) days of the commission's election, the city or town clerk notifies the nine (9) persons elected to serve as the commission of the initial commission meeting. At the initial meeting, the commission elects a chairman, vice-chairman, and clerk.

The city or town clerk is required to notify the Department of Housing and Community Development of the commission's election. The department is required to notify the commission of the dates for submitting its reports and placing the final report on the municipal election ballot.

**7. Funding a charter commission:** Within twenty (20) days of the election, the city or town treasurer is required with or without appropriation to credit the charter commission's account with funds based on the following scale:

Population under 12,000	\$ 2,000
12,000 to 49,999	\$ 5,000
50,000 to 99,999	\$ 7,500
100,000 and above	\$10,000

A city or town is also required to provide a charter commission with suitable office space and reasonable access to facilities for holding public hearings, free of charge.

A commission must be permitted to consult with, and obtain advice from, city and town officers and employees during ordinary working hours.

A city or town may contribute clerical or other staff assistance. The city or town may appropriate additional funds for use by the charter commission as is deemed necessary.

A charter commission may accept funds from any private or public source but must report in writing to the city or town clerk the name and address of any source, and any stipulations placed on such contributions.

A charter commission may use funds for:

(1) the employment of legal, research, and clerical assistance; (2) reimbursement of expenses incurred by commission members in the performance of their duties; and (3) printing and other necessary expenditures.

**8. Public hearings:** A charter commission must hold a public hearing within 45 days of its election. The purpose of this initial hearing or set of hearings is to solicit the views, comments, opinions, and proposals from the public for consideration by the charter commission.

The time and place of the initial public hearing and all subsequent public hearings held before a charter commission must be specified in a notice published in a newspaper of general circulation in the community at least ten (10) days prior to each hearing. Hearings may be adjourned and continued at another occasion without further published notice.



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**9. Preliminary report:** Within sixteen\* months after its election, the charter commission must prepare and publish a preliminary report. The preliminary report contains the commission's preliminary recommendations including the text of the proposed charter or charter revision and explanatory information which the commission chooses to include. (*\*A community with an annual election can complete the charter process in one year, producing the preliminary report within 8 months of its election and the final report within 10 months*).

The preliminary report must be published in a newspaper of general circulation in the community. The commission must supply the city or town clerk with sufficient copies of the preliminary report in order to enable the clerk to distribute copies to registered voters requesting them.

The charter commission must also deliver two (2) copies of the preliminary report to the Attorney General, and two (2) copies to the Department of Housing and Community development.

Within four (4) weeks of its publication, the charter commission is required to hold one or more public hearings on the preliminary report. Notice of the public hearing(s) must be published in a newspaper of general circulation in the community at least ten (10) days prior to the hearing.

**10. Opinion of the Attorney General:** Within four (4) weeks after receipt of the preliminary report, the Attorney General is required to furnish the charter commission with a written opinion relative to any provisions in the preliminary report which may be in conflict with the state constitution and the General Laws. The Attorney General does not have the authority to approve or disapprove a charter or charter revision; the Attorney General provides an opinion.

The charter commission should re-examine those aspects of the preliminary charter proposal that the Attorney General has referenced in his opinion as being in conflict with the constitution and the General Laws.

A charter commission must supply the Department of Housing and Community Development with two (2) copies of the commission's preliminary report. The Department of Housing and Community Development has no review authority but serves as a clearinghouse for all home rule charters. These files are open for inspection.

**11. Final Report:** Within eighteen\* (18) months after its election, the charter commission is required to prepare and submit a final report to the city council or board of selectmen. The final commission report, sometimes referred to as the proposed charter, must consist of: (1) the full text of the proposed charter with explanations and other information that the charter commission chooses to include; (2) an explanation of the major differences between the current and proposed charters; and (3) a minority report (if any) of not more than 1,000 words. (*\*A community with an annual election can complete the charter process in one year, producing the preliminary report within 8 months of its election and the final report within 10 months*).

A copy of the charter commission's final report must be sent to the attorney general and the department of housing and community development

**12. Final report placed on the ballot:** The city council or board of selectmen upon receipt of the final charter commission report must order the charter proposal or charter revisions to appear on the ballot at the next regular municipal election. At least two months must lapse between the election order and the municipal election.





The form of the ballot question would be as follows:

Shall this (city) (town) approve the (insert “new charter recommended by the charter commission” - or - “charter revision recommended by the charter commission”) summarized below?”

The city council or board of selectmen must also see that the final report of the charter commission is printed and distributed to each residence with one or more registered voters at least two (2) weeks prior to the election.

Additional copies of the final report must be provided to the city or town clerk, and made available for distribution to registered voters.

**13. *Municipal election:*** If a majority of voters vote in favor of a proposed charter or charter revision, the charter becomes effective on the date specified in the charter. If no date is specified, the charter is effective upon voter approval. The effective date of an amendment may also be specified in the order proposing it.

**14. *Notification of charter adoption:*** Four (4) certificates must be prepared and signed by the city or town clerk which set forth any charter that has been adopted or revised and any charter amendments. The certificates must be deposited with the office of the Secretary of State, the Attorney General, the Department of Housing and Community Development, and in the records of the city or town.

## **B. CHARTER AMENDMENT PROCESS**

**1. *Amendments proposed by the town meeting or city council:*** Town meetings and city councils are empowered to propose charter amendments by a two-thirds vote. These legislatively proposed amendments must be voted upon by the residents at the regular city or town election, and if approved by a majority of the voters, take effect.

Amendments may not relate in any way to the composition, mode of election of appointment, or terms of office of the legislative body, and the mayor, or city manager. These changes may be only through the charter adoption or revision procedure.

### **2. *Petition for suggested amendments:***

The citizen right of suggesting charter amendments is as follows:

- The mayor, city manager, or any member of the city council by a written request may place a charter amendment proposal before a city council;
- The town manager or any selectmen of a town by a written request may place a charter amendment proposal before town meeting; in addition, amendments may be proposed in a town on a petition signed by ten registered voters on a form (as provided in c. 43B, s. 15); in a city such petitions shall contain as many names as are needed to nominate a charter commission member (see page 1); in any of the above cases, the request is filed with the city/town clerk.
- Within three months of the filing with the clerk, the city council or board of selectmen shall call a public hearing to be held before it or by a committee established for that purpose.



- Any number of amendment proposals may be heard at the same time. The hearing shall be held within four (4) months of the filing; must be seven (7) days notice of the hearing published in a newspaper of general circulation.
- If the hearing is held by someone other than the city council in a city, such committee must make their report to the city council. In towns, the office or committee conducting the hearing must make its report to the town meeting. In cities final action must be taken no later than six (6) months after filing. In towns, final action must be taken at the first annual meeting held at least six (6) months after the filing provided that 200 voters or 20 per cent (20%) of the registered voters (whichever is less) may at any time request the selectmen to call a special meeting for the purpose; such meeting must then be held within 45 days of the receipt of the request.

A copy of any proposed amendment approved by the city council or town meeting is immediately to be filed with the Attorney General of the Commonwealth who within four weeks of such submission must furnish an opinion as to any conflict between the proposal and the state constitution or any state laws. If the Attorney General reports no conflict, the order placing the matter on the ballot will then take effect. If the Attorney General's opinion is that the proposal does conflict with either the state constitution or laws of the state, the order is suspended and the proposed amendment(s) will not go on the ballot unless the town meeting or city council by a further proceeding so provides.



## C. COMMUNITIES OPERATING UNDER HOME RULE CHARTERS *(as of 11/97)*

*(prepared and adopted under provisions of the Home Rule Amendment and M.G.L., c. 43B)*

### **CITIES: MAYOR - COUNCIL**

### **COUNCIL - MANAGER\***

Agawam (1) Easthampton (2) Lynn  
Amesbury (2) Gloucester Methuen (2)  
Attleboro Leominster (2) Newton  
Beverly

Worcester Greenfield (3)  
Barnstable Southbridge  
Franklin Watertown

### **TOWNS: REPRESENTATIVE TOWN MEETING - BOARD OF SELECTMEN - MANAGER +**

Auburn Dedham Plymouth Swampscott (4) Webster  
Billerica (2) Falmouth Reading Walpole Winchester  
Chelmsford Natick Stoughton

### **OPEN TOWN MEETING - BOARD OF SELECTMEN - MANAGER +**

Abington	Chatham	Lynnfield	Nahant	Orleans	Seekonk	Westborough
Acton	Dracut	Mansfield	No. Andover	Oxford	Stow	Westwood
Acushnet	Eastham	Marshfield	No. Reading	Palmer	Sturbridge	Winchendon
Ashland	Easton	Maynard	Northborough	Provincetown	Sutton	
Bedford	Grafton	Medfield	Northbridge	Rockland (4)	Truro	
Bellingham	Harwich	Middleton	Norton	Salisbury	Wareham	
Blackstone	Hudson	Millis (4)	Norwell	Scituate	Wellfleet	

\* Council-manager form most often associated with CITY government; however, the communities listed here, with the exception of Worcester, identify themselves as towns, and Southbridge secured passage of a special act specifying that all laws which apply to towns are applicable to Southbridge.

+ "Manager" is used here as a generic title, connoting a professional administrative position of similar responsibility, e.g., town administrator, executive secretary, town executive, town coordinator, etc.

NOTES: (1) AGAWAM originally adopted council-manager charter in 1971; in 1988, town secured passage of a special act replacing the manager with an elected mayor (2 year term). METHUEN similarly revised its charter in November, 1992 by special act and in November, 1993 elected a mayor (2 year term) to replace the appointed manager.

(2) had previously adopted home rule charter.

(3) charter also provides for election of a five-member board of selectmen.

(4) charter does not provide for a management position, although Millis, Nahant, and Rockland subsequently created such a position.

(5) Seekonk revised its representative town meeting charter in 1995, returning to open town meeting.



